

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF ADOPTION,
Rules I through VII, amendment of)	AMENDMENT, AND REPEAL
37.111.101, 37.111.106, 37.111.107,)	
37.111.116, 37.111.117, 37.111.121,)	
37.111.122, 37.111.124, 37.111.130,)	
and repeal of 37.111.104,)	
37.111.105, 37.111.115, 37.111.123,)	
and 37.111.135 pertaining to public)	
sleeping accommodations)	

TO: All Concerned Persons

1. On February 23, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-574 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 375 of the 2012 Montana Administrative Register, Issue Number 4.

2. The department has amended ARM 37.111.124 and repealed ARM 37.111.104, 37.111.105, 37.111.115, 37.111.123, and 37.111.135 as proposed.

3. The department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

NEW RULE I (37.111.102) REVIEW OF PLANS AND SPECIFICATIONS

(1) ~~Whenever an initial license is applied for, the applicant must submit plans and specifications to the local health authority for review and approval before construction, remodeling, or conversion begins.~~ Plans and specifications must be submitted to the local health authority for review and approval before any new license is issued.

(2) Local health authority approval is required before any construction, remodeling, or conversion for a new or existing establishment begins.

(3) The local health authority must review the plans and respond to the applicant within 30 days with a written approval, disapproval, or request for additional information.

(4) If the establishment was previously licensed by the department and no structural modification will be involved, the local health authority may waive the requirement for the submission of plans and specifications.

(2) through (5) remain as proposed, but are renumbered (5) through (8).

~~(6) If the establishment was previously licensed by the department and no structural modification will be involved, the local health authority may waive the requirement for the submission of plans and specifications.~~

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

NEW RULE II (37.111.110) WATER SUPPLY SYSTEM GENERAL REQUIREMENTS (1) remains as proposed.

(2) A public water supply system must be approved by the Montana Department of Environmental Quality (DEQ) and meet the requirements of ARM Title 17, chapter 38, subchapters 1, 2, 3, and 5.

(3) and (4) remain as proposed.

(5) The department adopts and incorporates by reference FCS Circular 1-2012 in effect ~~April 27, 2012~~ May 11, 2012, which contains potable water construction and maintenance standards for nonpublic water supplies serving licensed establishments. A copy of FCS Circular 1-2012 may be obtained from the Department of Public Health & Human Services, Food & Consumer Safety Section, P.O. Box 202951, Helena, Montana 59620-2951. The FCS Circular 1-2012 is also available on the department's web site at www.fcsmont.gov.

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

NEW RULE III (37.111.111) NONPUBLIC WATER SUPPLY SAMPLING AND TEST REPORTS (1) and (2) remain as proposed.

(3) An establishment using a nonpublic water supply system must have a water sample analyzed for total nitrate before initial licensing and at least ~~once each year~~ every three years that the establishment is licensed.

(4) remains as proposed.

(5) The establishment must ensure water test results are transmitted to the local health authority from the laboratory in a format acceptable to the local health authority within five working days, except as required in New Rule IV (37.111.112(1)(c) and (3)(d)).

(6) remains as proposed.

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

NEW RULE IV (37.111.112) NONPUBLIC WATER SUPPLY CONTAMINATED SAMPLES (1) If coliform bacteria is detected in a nonpublic water supply routine sample, the establishment must:

(a) collect at least four more repeat samples within 24 hours of notice at the following system points:

(i) through (3)(d) remain as proposed.

(4) If an establishment fails to take the four repeat or five routine samples following the detection of coliform, or the laboratory fails to test for fecal coliform or E. coli in coliform positive samples, the establishment must follow corrective actions as specified in (3).

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

NEW RULE V (37.111.113) WATER SUPPLY CORRECTIVE ACTIONS

(1) An establishment must take appropriate corrective action, which may include shock disinfection, replacement, or repair of the water supply system within a period specified by the local health authority when:

(a) a water sample exceeds ~~the~~ a maximum contaminant levels as specified in ARM Title 17, chapter 38, subchapter 2;

(b) through (e) remain as proposed.

(2) When a water supply is replaced or repaired, the water supply system must be shock disinfected before the system is placed into service.

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

NEW RULE VI (37.111.114) WATER SUPPLY RESTRICTED-USE ORDER

(1) The local health authority shall issue a restricted-use order to an establishment when:

(a) the Montana Department of Environmental Quality (DEQ) has issued a boil water order;

(b) and (c) remain as proposed.

(d) a nonpublic water supply sample exceeds ~~the~~ a maximum contaminant levels as specified in ARM Title 17, chapter 38, subchapter 2;

(e) through (3)(a) remain as proposed.

(b) water from a DEQ-approved public water supply that meets the requirements of ARM Title 17, chapter 38, subchapters 1, 2, 3, and 5, stored in a clean, sanitized, and covered potable water container or holding tank;

(c) remains as proposed.

(d) if the water is fecal or E. coli contaminated, water that has been boiled for at least one minute, and stored and served from a clean, sanitized, and covered container; or

(e) through (6) remain as proposed.

(7) An establishment subject to a restricted-use order may wash, rinse, and sanitize dishes, utensils, and equipment using the affected water system if using an approved chemical disinfectant or a commercial dish machine that reaches 180°F (82°C) in the final rinse, or as directed by the local health authority.

(8) remains as proposed.

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

NEW RULE VII (37.111.118) ICE (1) and (2) remain as proposed.

(3) ~~Ice must be~~ When ice is not stored in an automatic dispenser if the ice is not dispensed and is available to multiple guests or groups of guests, then the ice must be served directly by the establishment staff.

(4) ~~Where open bin ice is provided, an~~ An ice scoop must be readily available for use by the staff and protected from contamination.

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

4. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.111.101 DEFINITIONS In addition to those definitions contained in 50-51-102, MCA, the following definitions apply to this subchapter:

(1) through (3) remain as proposed.

(4) "Establishment" means a facility providing sleeping accommodations to the public, such as a hotel, motel, tourist home, or rooming house, including boarding house, hostel, or vacation ~~home~~ rental. For the purpose of this subchapter, establishment does not include a "bed and breakfast," "guest ranch," or "outfitting and guide facility."

(5) and (6) remain as proposed.

~~(7) "Furnishing" means an item provided within a guest unit including, but not limited to, a cup, glass, pitcher, ice bucket, utensil, drapery, curtain, blind, light fixture, lamp and lamp shade, chair, table, desk, shelf, book, magazine, bookcase, dresser, bedstead, mattress, box springs, towel, wash cloth, soap, toilet tissue, radio, television, coffee maker, microwave oven, heating and cooling unit, picture, mirror, cabinet, closet, and refrigerator.~~

(8) and (9) remain as proposed, but are renumbered (7) and (8).

~~(10) (9) "Local health authority" means a local health officer, sanitarian, or sanitarian-in-training, or any other person authorized by the local board of health or department.~~

(11) remains as proposed, but is renumbered (10).

(11) "Sanitize" means the application of a 100 to 200 parts per million (ppm) solution of household bleach, approximately 5% by weight, for at least ten seconds.

(12) "Shock disinfection" means an application of a chemical disinfectant to a water supply in order to kill all microorganisms. The chemical disinfectant is usually chlorine at a concentration much stronger than allowed in potable water, or another method approved by the local health authority.

(13) and (14) remain as proposed.

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

37.111.106 LICENSURE, RENEWAL, AND INSPECTION (1) The local health authority must make a precicensing inspection to determine compliance with the requirements of this subchapter before a license is issued by the department or validated by the local health officer. No person shall operate an establishment without a license issued by the department and validated by the local health officer.

~~(2) An issued license is not transferable to any other premises or licensee.~~

~~(3) A license may be issued or renewed by the department and validated by the local health officer if the establishment demonstrates compliance with this subchapter.~~

(4) through (7) remain as proposed, but are renumber (2) through (5).

~~(8) (6)~~ A copy of the completed inspection report form Inspection findings must be given to the person in charge of the establishment at the conclusion of the inspection.

(7) A copy of the completed inspection form must be given to the establishment owner or designee within three business days.

(9) remains as proposed, but is renumbered (8).

~~(40) (9)~~ The completed inspection report is a public document that must be made available for public review upon request, distribution to any person upon payment of copying costs, or provided to the department upon request.

(11) and (12) remain as proposed, but are renumbered (10) and (11).

AUTH: 50-51-103, 50-51-303, MCA

IMP: 50-51-103, 50-51-301, 50-51-303, MCA

37.111.107 PHYSICAL REQUIREMENTS ~~(1) At least one storage room sufficient in size for the storage of extra bedding and furnishings must be provided. Sufficient storage space must be provided for extra bedding and furnishings.~~

(2) Adequate and convenient janitorial facilities must be provided, including a janitor sink and storage area for equipment and chemicals ~~must be provided~~. A tourist home is not required to have a janitor sink.

(3) remains as proposed.

(4) Floors and walls in toilet and bathing rooms, laundries, janitorial closets, and similar rooms subject to large amounts of moisture must be smooth, durable, nonabsorbent, and easily cleanable.

(5) through (7) remains as proposed.

(8) Establishment property must be maintained to minimize the presence of insects, rodents, and other vermin which may affect public health.

(9) and (10) remain as proposed.

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

37.111.116 WASTEWATER SYSTEM (1) An adequate and safe wastewater system must be provided for conveying, treating, and disposing of all sewage from ~~permanent public sleeping accommodations and food service~~ an establishment.

(2) through (5) remain as proposed.

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

37.111.117 SOLID WASTE (1) remains as proposed.

(2) Solid waste must be removed from the premises at least weekly to a licensed solid waste disposal facility or at another frequency approved by the local health authority.

(3) remains as proposed.

(4) Solid waste containers must be rodent-proof, stable, and protected from deterioration.

(5) Solid waste containers must be sufficiently covered when not in use to prevent the entry of water or flies.

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

37.111.121 LAUNDRY FACILITIES (1) and (a) remain as proposed.

(b) Laundered items must be thoroughly hot air tumble dried to at least 130 °G E (54 °C) for ten minutes.

(2) and (3) remain as proposed.

(4) ~~A handsink may be used for soaking laundry if the handsink remains accessible for handwashing when needed~~ If the handsink is used for soaking laundry, it must be accessible for handwashing when needed.

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

37.111.122 GUEST ROOM CLEANING AND MAINTENANCE

~~(1) Housekeeping must be provided between the occupancy of different guests and at least daily or as requested by each guest.~~

~~(a) Clean bed sheets and pillow cases must be provided to each guest daily or as requested by a guest.~~

~~(b) Clean towels and washcloths must be provided to each guest daily or as requested by a guest.~~ Guest rooms must be cleaned and supplied with freshly laundered sheets, pillow covers, towels, and washcloths before each new guest or group of guests arrive.

(2) Clean bed sheets, pillow covers, towels, and washcloths must be provided to each guest at least weekly. They may be provided more frequently as requested by a guest or according to establishment policy.

(c) and (d) remain as proposed, but are renumbered (3) and (4).

(5) Each mattress must be covered with a machine-washable pad.

(6) Sheets must adequately cover the bed and fold over the blanket at least six inches.

(7) All bedding including quilts and comforters must be machine-washable or covered with machine-washable linen such as a duvet.

(2) remains as proposed, but is renumbered (8).

~~(3) (9)~~ A designated janitor sink must be used for washing and rinsing of mops, brooms, brushes, or and other cleaning devices. Tourist homes may use an alternative as approved by the local health authority.

~~(4) Bathtub, shower, toilet, and urinal cleaning devices must be kept separate and may not be used for any other purpose.~~

(10) Toilet and urinal cleaning devices must be kept separate from other cleaning supplies and may not be used for any other purpose. Bathtub and shower cleaning devices must be kept separate from other cleaning supplies and may not be used for any other purpose.

(5) remains as proposed, but is renumbered (11).

~~(6) Management must provide written instructions to guests when guests are responsible for cleaning, dishwashing, or laundry tasks.~~

(7) remains as proposed, but is renumbered (12).

~~(8) (13) Cleaning compounds and pesticides must be stored, used, and disposed of in accordance with the manufacturer's label requirements and manufacturer's instructions.~~

(9) remains as proposed, but is renumbered (14).

~~(10) (15) Glasses, pitchers, ice buckets, coffee pots, and other utensils used for food or drink provided for guests must be washed, rinsed, and sanitized in approved facilities as specified in ARM 37.110.215(14) or single-service items must be used.~~

(11) remains as proposed, but is renumbered (16).

AUTH: 50-51-103, MCA

IMP: 50-51-103, MCA

37.111.130 GUEST REGISTRATION (1) Each establishment must maintain a register of all overnight guests, including name and ~~home address~~ contact information of the guest and unit to which the guest was assigned.

(2) Guest registration must be kept available for at least ~~90 days~~ one year for communicable disease investigations or other public health reasons.

AUTH: 50-1-202, 50-51-103, MCA

IMP: 50-1-202, 50-2-118, 50-51-103, MCA

5. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: Several commenters suggested grammatical corrections to the proposed rules.

RESPONSE #1: The department has made grammatical corrections to the following proposed rules: New Rule IV (37.111.112), New Rule V (37.111.113), ARM 37.111.106, 37.111.107, 37.111.116, 37.111.117, 37.111.121, and 37.111.122.

COMMENT #2: One person commented about New Rule I (37.111.102) suggesting that approval of plans and specifications remain at the local health authority. Another commenter suggested the department should have authority to review plans and act on behalf of the local health authority when it does not have the capacity to perform the necessary functions.

RESPONSE #2: The department agrees that plan review is best accomplished at the local level. The ambiguous language authorizing either the local or state department to conduct a review is now removed. No language change is needed to allow department review when the local health authority is unable to perform this task.

COMMENT #3: Several persons commented that they want New Rule I (37.111.102) to specify a health authority review deadline so that timely business plans can carry forward.

RESPONSE #3: The department agrees and a 30 day review time is now included in the proposed rule.

COMMENT #4: One commenter believes documentation of the Department of Environmental Quality (DEQ) approval is not necessary in New Rule I (37.111.102) when the establishment uses a public water supply or public wastewater system. Another commenter states this rule is confusing.

RESPONSE #4: The department does not agree that documentation of compliance is not beneficial. The new rule has been clarified to avoid confusion.

COMMENT #5: One commenter asks the department to clarify in New Rule I (37.111.102) when plan review is required.

RESPONSE #5: The department has clarified New Rule I (37.111.102) to state when plan review is required.

COMMENT #6: One commenter supports monthly bacteriological testing of nonpublic water systems in New Rule III (37.111.111).

RESPONSE #6: The department acknowledges the value of frequent water testing. However, each water sample adds to the time and cost to the business. New Rule III (37.111.111) provides for sampling when groundwater systems are at greatest risk of contamination. Additionally, the rule allows the local health authority to require more frequent sampling if justified.

COMMENT #7: Two commenters suggest nitrate sampling be done every three years instead of every year to be consistent with public water supply system requirements in New Rule III (37.111.111).

RESPONSE #7: The department agrees and New Rule III (37.111.111) now requires nitrate sampling every three years.

COMMENT #8: One commenter suggests water test results be transmitted to the local health authority within a specified time in New Rule III (37.111.111).

RESPONSE #8: The department agrees that including a time frame for reporting will help the local health authority follow up and assist in problem situations. Certified labs are able to send out a report to the operator and the local health authority at the same time, so this is not expected to be extra work for the business.

COMMENT #9: One commenter says it is not clear why the establishment and the local health authority must keep water sample results in New Rule III (37.111.111).

RESPONSE #9: Both the local health authority and establishment need to be aware of any current water supply problems and recurring contamination patterns to protect public health.

COMMENT #10: One commenter says New Rule IV (37.111.112) should specify the time frame for collecting repeat samples, as immediately or within one week.

RESPONSE #10: The department agrees. The new rule has been amended and now requires repeat samples to be taken within 24 hours of notification, to be consistent with current state and federal public water supply water quality standards.

COMMENT #11: One commenter states, "the number of repeat samples and the five routine samples following contamination seems excessive unless this is consistent with public water supply regulations." Another commenter states New Rule IV (37.111.112) is confusing.

RESPONSE #11: This sampling requirement is consistent with public water supply regulations, as established by the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Environmental Quality (DEQ), which can be found in 40 CFR Parts 141 and 142. The local sanitarian and the department are available to assist the establishment with any additional sampling requirements which may be required.

COMMENT #12: One commenter says the phrase "appropriate action" is not clear in New Rule IV (37.111.112) when coliform or fecal coliform is detected in a repeat sample, and that a reference to New Rule V (37.111.113) should be added.

RESPONSE #12: The rule does not define "appropriate action" because the circumstances of the contamination will determine the best effective measures to protect the water supply. New Rule V (37.111.113) lists the circumstances when corrective action must be carried out, not specific instructions.

COMMENT #13: One commenter points out that a certified laboratory is required to perform a fecal coliform test when coliform bacteria is detected, as referenced in New Rule IV (37.111.112).

RESPONSE #13: The department agrees and the rule has been amended and now clarifies the laboratory does the testing.

COMMENT #14: One commenter says vulnerability of the water system should be based on a sanitary survey in New Rule V (37.111.113), with specific parameters, rather than on just a site visit.

RESPONSE #14: Although the department agrees the criteria set forth in a sanitary survey provides the parameters for determining vulnerability, the department does not want to specifically require a sanitary survey be entirely completed before a deficiency can be noted and remedied.

COMMENT #15: One commenter wants the rule to specify that shock disinfection must occur "prior to the system being placed back into service" in New Rule V (37.111.113).

RESPONSE #15: The department agrees. This rule has been amended and this addition is added to help clarify the disinfection process.

COMMENT #16: One commenter expressed the adjective "clean" does not have adequate meaning without the addition of "sanitized and covered" in New Rule VI (37.111.114). The commenter also suggests that method of sanitization needs to be specified within the rule.

RESPONSE #16: The department agrees, and the new rule has been amended and now states containers must be clean, sanitized, and covered. A definition of "sanitized" consistent with FDA Food Code 2009 has been added to the rule, to mean 100-200 ppm chlorine for 10 seconds.

COMMENT #17: One commenter states that "clean, sanitized, and covered" should be added to water delivered by a licensed water hauler in New Rule VI (37.111.114).

RESPONSE #17: The department disagrees that the phrase "clean, sanitized, and covered" needs to be added. Water haulers are already subject to rules which go beyond the scope of this rule. The sanitization process for a water hauler may be different than for a smaller water container, as used in this subchapter.

COMMENT #18: One commenter suggests adding the option of the local health authority giving direction to the dishwashing process in New Rule VI (37.111.114), depending on the circumstances of the contamination.

RESPONSE #18: The department agrees the local health authority may be able to give alternative instruction to dishwashing procedures, depending on the nature of contamination. The new rule was amended and now contains this suggestion.

COMMENT #19: One commenter requests the new regulation for water supply system, sampling, corrective action and restricted use only apply to nonpublic water supply systems that could fail without state oversight.

RESPONSE #19: New Rules II (37.111.110), III (37.111.111), and IV (37.111.112) are only applicable to systems not under public water supply system rules. New Rules V (37.111.113) and VI (37.111.114) apply to both public and nonpublic water supplies, because DEQ boil orders do not provide specific protocol for licensed establishment operations.

COMMENT #20: One commenter states New Rule VII (37.111.118) for ice needs to include storage in a clean, sanitized, and covered container. The commenter also states the subchapter should contain all the information and requirements to provide foods, including ice.

RESPONSE #20: The department disagrees that all the information and requirements to provide foods, including ice, must be described within this subchapter. The subchapter requires compliance with the retail food service administrative rules, Title 37, chapter 110, subchapter 2. The department believes this subchapter provides for safe water and ice extensively in New Rules II (37.111.110), III (37.111.111), IV (37.111.112), V (37.111.113), VI (37.111.114) and VII (37.111.118), which supplement the retail food service rule.

COMMENT #21: One commenter asks the department to remove the requirement in New Rule VII (37.111.118) that ice in a tourist rental made by an ice maker or ice stored in a freezer must be directly served by management.

RESPONSE #21: The department agrees ice within a sleeping unit or tourist home should be available for the guests to serve themselves. The rule has been amended to make clear that ice made available to multiple guests or groups of guests must be served by staff, or stored in an automatic dispenser.

COMMENT #22: One commenter points out the current terminology for "tourist home" is "vacation rental" and not "vacation home", as used in ARM 37.111.101(4).

RESPONSE #22: The department agrees, and the rule language is updated to reflect this vernacular.

COMMENT #23: One commenter says the definition of "furnishings" in ARM 37.111.101(7) is not needed, since the common understanding of the dictionary term is reasonable.

RESPONSE #23: The department agrees and the definition is removed.

COMMENT #24: One commenter requests clarification to the definition of "local health authority" in ARM 37.111.101(9).

RESPONSE #24: The department agrees, and the rule has been amended and is now consistent with 50-51-301, MCA.

COMMENT #25: One commenter states "the chemical disinfectant is usually chlorine" should be replaced by "shocking must be done using a department approved chemical disinfectant" in ARM 37.111.101(12).

RESPONSE #25: The department agrees shock disinfection can be done by other methods approved by the department. The rule has been amended and this clarification is added to the definition.

COMMENT #26: One commenter suggests adding a definition of "approved" in ARM 37.111.101, to mean "acceptable to the department, based on its determination of conformance with this chapter and good public health practices."

RESPONSE #26: The department believes the use of the "approved" within this subchapter is already clear.

COMMENT #27: One commenter states requiring a license in ARM 37.111.106(1) before opening is incredibly slow and a hindrance to doing business. The commenter would like to see equal effort put into licensing properties and making routine inspections in remote areas.

RESPONSE #27: The department agrees the process should be appropriate, and New Rule I (37.111.102) includes a time frame for plan review completion. State law requires a license to be issued and validated before opening to the public, regardless of location, as stated in 50-51-201(1), MCA. The rule has been amended and language requiring a preopening inspection, unintentionally removed, is reinstated.

COMMENT #28: One commenter says the need to apply for a new license at the sale of an existing property found in ARM 37.111.106(2) is restrictive and burdensome.

RESPONSE #28: State law does not allow licenses to be transferred to another person (Ref 50-51-206, MCA). The rule does allow for a waiver from plan review if no significant structural modifications are made.

COMMENT #29: One commenter objects to ARM 37.111.106(5) and (6) requiring the inspector give a copy of the report immediately to the establishment after the inspection.

RESPONSE #29: The department believes it is important to public health for rule violations to be disclosed to the person in charge as soon as possible for immediate correction. However, the department agrees a reasonable time period can be given to the inspector to complete the report form, and deliver it to the owner or designee. The rule has been amended to reflect these changes.

COMMENT #30: One commenter questions the necessity of ARM 37.111.106, because much of this section repeats the statute requirements for licensing and inspection.

RESPONSE #30: The department agrees that parts of ARM 37.111.106 repeat the same content within 50-51-201(1), (3), (4), 50-51-214, 50-51-206, 50-51-215, and 50-51-301, MCA. The rule has been amended and these redundant rules are removed. The pre-opening inspection requirement is reinstated.

COMMENT #31: One commenter believes low risk establishments inspected only upon licensing and complaint should post a notice near the door stating the facility is inspected at a reduced frequency and any sanitation complaint should be reported to the state or local agency. Other details about the notice are suggested for ARM 37.111.106.

RESPONSE #31: Inspection frequency is based on a number of factors, including risk level, type of establishment, compliance, etc. The department believes it is not practical to alert the public of inspection frequency and posting the term "reduced frequency" could be misunderstood.

COMMENT #32: One commenter states "utility sink" in ARM 37.111.107(2) and 37.11.122(9) is more common terminology than "janitor sink", and should be used.

RESPONSE #32: The department chooses to use the term "janitor sink" because the sink referred to in rule has limited function, and can only be used for mop water and other janitorial cleaning functions.

COMMENT #33: One commenter asks the department to consider adding "durable to use" when describing floors and walls in bathrooms and other places subject to moisture in ARM 37.111.107(4). The commenter states, "this would allow the reviewing authority to require a commercial grade of surface as deemed necessary."

RESPONSE #33: The department agrees the term "durable" could avoid temporary cosmetic fixes which do not endure with the use of the room, and the rule has been amended to reflect this addition. However, this rule does not specifically require commercial grade floors and walls unless it is needed to remain smooth, durable, nonabsorbent, and easily cleanable.

COMMENT #34: One commenter suggests adding requirements for smoke detectors, carbon monoxide detectors, and ventilation for fossil-fueled space heaters in ARM 37.111.107.

RESPONSE #34: The department believes smoke detectors, carbon monoxide detectors, and ventilation for fossil-fueled space heater requirements, inspections, and enforcement are more appropriate under the authority of the state fire marshal and state building codes bureau.

COMMENT #35: One commenter suggests language requiring a minimum size for sleeping rooms in ARM 37.111.107.

RESPONSE #35: The department does not agree that minimum spacing requirements for public sleeping accommodations is needed to protect public health.

COMMENT #36: One commenter suggests using "establishment" instead of "permanent public sleeping accommodations and food service" in ARM 37.111.116(1).

RESPONSE #36: The department agrees using "establishment" is more simple and clear, the rule has been amended to reflect this change.

COMMENT #37: One commenter says reference to ARM 17.36.913 should be used in ARM 37.111.116(4). The commenter is concerned that contamination of a water supply must be proven before correction is made.

RESPONSE #37: The department agrees ARM 17.36.913 is applicable. This is reflected in 37.111.116(4), which describes the conditions requiring replacement or repair.

COMMENT #38: One commenter suggests using the term "wastewater treatment system" instead of "wastewater system" and "sewage" instead of "wastewater" in ARM 37.111.116.

RESPONSE #38: The department disagrees that this rule should be titled "wastewater treatment system", because wastewater treatment is a separate process from the disposal. "Wastewater system" is meant to include collection, treatment, and disposal, and is defined in ARM 37.111.101(14). The department disagrees that "sewage" should be used instead of "wastewater". The rule uses the term "wastewater" to include both sewage from toilet facilities and grey water from kitchens, laundry facilities, showers, etc.

COMMENT #39: One commenter states the requirement of weekly garbage removal in ARM 37.111.117(4) is a problem for small business in remote areas.

RESPONSE #39: The department agrees some types of establishments such as tourist homes may be able to store solid waste for longer than one week in a sanitary manner. The rule has been amended to allow alternative disposal frequencies, as approved by the local health authority.

COMMENT #40: One commenter asks the department to reinstate some or all of the solid waste requirements in ARM 37.111.117, so that specific language in the rule can be cited in problem situations.

RESPONSE #40: The rule has been amended to include language to specifically address container lids, stability, and integrity.

COMMENT #41: One commenter is concerned about monitoring dryer temperature and the lack of the Centers for Disease Control and Prevention (CDC) guidance for washing laundry in ARM 37.111.121(1) for public accommodations.

RESPONSE #41: CDC reports head lice is killed at 128°F for 5 minutes and bedbugs are killed at 120°F. The new rule eliminates a minimum washing temperature because detergents currently on the market are designed to be used in hot or cold water. The department believes standard procedures for soil removal, and the killing of head lice and bed bugs to be sufficient for the protection of public health. To monitor the dryer temperature, the department suggests the use of nonreversible sticker indicators. These products are readily available, and similar to the heat indicators many inspectors use to test dishwasher final rinse temperature on a dish.

COMMENT #42: One commenter says it may be useful to clarify the labeling of containers to differentiate between "clean" and "soiled" in ARM 37.111.121(2)(a).

RESPONSE #42: The department believes the language in 37.111.121(2) is clear enough and the department does not need to require specific words to be used on laundry containers.

COMMENT #43: Several commenters oppose requiring daily linen to be provided to guests unless specifically requested otherwise by the guest in ARM 37.111.122(1). Common practice today for the hospitality industry is to change towels, washcloths, and bed linen on a prescribed schedule to extended-stay guests, such as every 3-4 days, unless daily service is requested. The industry is interested in saving natural resources (water and electricity) and reducing costs. One commenter suggested "made available" is more applicable than "provided." One commenter adds the need for the flexibility of establishment policy to have periodic access to guest rooms for general sanitation concerns.

RESPONSE #43: The department agrees that daily linen service is something to be specifically requested by the guest. The department agrees conservation efforts should be included in the rule. ARM 37.111.122(1) and (2) have been amended and now more clearly state that a weekly change of linen is the minimum, and allows the guest to request more frequent service. Additionally, new language allows the establishment to follow their own policy, when the establishment has concerns about adequate sanitation in their facility.

COMMENT #44: Several commenters object to the requirement of management providing written instruction to guests when guests are responsible for cleaning, dishwashing, or laundry tasks in ARM 37.111.122. Two commenters express concern of leaving these tasks to the guests. Another commenter expresses concern over liability issues for the establishment.

RESPONSE #44: The department agrees and this requirement has been removed from the rule. Although benefit may be gained by making guests aware of proper sanitization of dishes, the risk to public health is minimal.

COMMENT #45: One commenter suggests air-drying mop heads daily because "between uses" is unclear in ARM 37.111.122(8). The commenter also says that the

previous language saying mop heads must be changed with some frequency was good.

RESPONSE #45: The department believes the new rule language is more clear, and takes into account all mop types, not only ones with laundered heads.

COMMENT #46: One commenter says ARM 37.111.122(12) is not clear. The commenter also says it is self-evident that management must provide whatever maintenance is needed to remain in compliance with the regulations.

RESPONSE #46: The department believes the rule is clear. Keeping the maintenance requirement will be helpful to prompt establishments to take care of issues promptly, rather than waiting for an indefinite time frame, remodeling, or change of ownership.

COMMENT #47: One commenter suggests requiring material safety data sheets (MSDS) in ARM 37.111.122(13) for all cleaning compounds and pesticides.

RESPONSE #47: The department disagrees, because federal law requires these products to have sufficient safe handling and disposal instruction on the label of the product. Requiring MSDS sheets adds a significant responsibility which was not previously in this rule.

COMMENT #48: Multiple commenters object to the disallowance of ozone air purifiers in ARM 37.111.122(14). Two commenters ask for evidence to support this exclusion. One commenter points out alternatives to ozone air purifiers are not given by the department.

RESPONSE #48: The subchapter now prohibits the use of ozone air purifiers because EPA concludes ozone can be harmful to health. Instead of relying on ozone air purifiers, EPA suggests 1) eliminating the pollution source, 2) ventilation, and 3) air cleaning with a filter, ionizer, or gas absorbing material.

COMMENT #49: One commenter says coffee pots should be specifically mentioned in ARM 37.111.122(15) as needing washing, rinsing, and sanitizing.

RESPONSE #49: The department agrees and the rule has been amended so coffee pots are listed with glasses, pitchers, and ice buckets.

COMMENT #50: Two commenters object to referencing retail food service requirements in ARM 37.111.122(15) for the washing, rinsing, and sanitizing of food and beverage dishes and utensils provided to guests. The concern is that local jurisdictions may require commercial dishwashing machines when they have not been required in the past.

RESPONSE #50: The department agrees that commercial dishwashing machines are not always necessary to accomplish adequate washing, rinsing, and proper

sanitization for small loads of utensils and dishes. The rule is reworded to require washing, rinsing, and sanitizing, without reference to the retail food service rules. The local health authority review and approval of dishwashing facilities is addressed in New Rule I (37.111.102).

COMMENT #51: One commenter says, "there appears to be no language regarding linen cleanliness." This commenter suggests providing clean linen to each guest at registration and at least weekly, bed furnishing kept clean and free of insect infestations, quilts and comforters must be machine washable, dirty laundry kept in cleanable containers, mattress pads clean and in good repair, and sheets long enough to fold back over the blanket at least 12 inches.

RESPONSE #51: The department disagrees that the subchapter does not address linen cleanliness. Laundry storage, laundry cleaning requirements, linen availability, and other sanitary conditions are within ARM 37.111.107, 37.111.121, and 37.111.122. The department agrees quilts, comforters, and other bedding must be machine washable or covered with washable linen such as a duvet, and machine washable mattress pads must be provided. The department believes a sheet folded over a blanket at least 6 inches is adequate. The rule has been amended.

COMMENT #52: Three commenters believe that bathroom cleaners must contain fungicide or germicide, to prevent the transmission of diseases such as athlete's foot and those routinely found in aerosolized human feces.

RESPONSE #52: The department supports environmentally responsible cleaning as much as possible. The department can find no significant justification for requiring a fungicidal or germicidal cleaner for bathroom floors, toilets, and other nonfood contact surfaces. Athlete's foot, caused by *tinea pedis* and other dermatophytes, are normal inhabitants of human skin. Dermatophytes and pathogenic bacteria from human feces are easily removed and killed with adequate cleaning and drying of the bathroom surfaces.

COMMENT #53: One commenter suggests adding a requirement to leave refrigerators on at all times in guest rooms.

RESPONSE #53: The department disagrees that refrigerators need to be left on when the guest room is empty or not used. This wastes electricity and adds cost to the establishment.

COMMENT #54: One commenter suggests language in ARM 37.111.122 to exclude persons with a communicable disease from working in the establishment.

RESPONSE #54: Although working in a public accommodation is not considered a "sensitive occupation," the authority is already in statute and rule to restrict a contagious person from work, if the health officer or department determines there is a risk to public health.

COMMENT #55: One commenter says no limitations on what foods are allowed to be served in ARM 37.111.124 and not requiring licensing creates a potentially hazardous situation.

RESPONSE #55: The rule clearly states a sleeping accommodation must meet the requirements for retail food service establishments, ARM 37.110.201 through 37.110.259. The administrative rules for retail food service adequately address facility requirements and safe handling practices based on types of food, preparation, and other relative risk factors. Montana statute does not allow the department to require licensing under 50-50-101(7)(a)(iv), MCA.

COMMENT #56: One commenter asks if the guest registration requirement in 37.111.130(1) is archaic and no longer relevant to public health. Another commenter proposes this rule be clarified as applying to overnight guests, as opposed to day-time customers of other services. Another commenter expresses concern about listing the guest home address, and says phone or e-mail information is more useful.

RESPONSE #56: The department considered removing this requirement, but concerns such as identifying missing persons in a natural disaster, tracking food or water borne illness, and other communicable disease investigations are important. The rule clarifies this applies to overnight guests. The department agrees contact information does not need to include a home address, and the rule has been amended to allow other contact information to be listed.

COMMENT #57: Two commenters suggest records of registered guests in ARM 37.111.130(2) should be kept for one year to be consistent with ARM 37.111.310(3).

RESPONSE: #57: The department agrees that a record retention of one year may make compliance with the rule easier to remember, and the rule has been amended to reflect this time frame.

COMMENT #58: One commenter requests local health authority determination to be added to the definition of mixing zone in Circular FCS 1-2012 (2.6).

RESPONSE #58: The department agrees the local health authority can determine a mixing zone and the language has been changed to clarify that the "permit" is a "local health authority permit."

COMMENT #59: One commenter would like to see the most current Circular DEQ4 referenced in Circular FCS1-2012 (3.2.3), not the 2009 edition.

RESPONSE #59: The department cannot reference a draft document. The department will make efforts to update the FCS Circular FCS1-2012 in a timely manner.

COMMENT #60: One commenter asks which rule applies if a business consists of both a bed & breakfast (B&B) and a tourist home.

RESPONSE #60: Each establishment facility must meet the requirements which are applicable. A house used as a B&B must meet ARM Title 37, chapter 111, subchapter 3 and a house or condo used as a tourist home must meet ARM Title 37, chapter 111, subchapter 1.

COMMENT #61: One commenter suggests vacation rentals (tourist homes) be regulated under their own subchapter.

RESPONSE #61: The new rule now addresses unique concerns for tourist homes, such as allowing housekeeping to be done before a new group arrives, weekly, or at a frequency set by the establishment. The rule now refers to adequate storage space, and not a separate room for extra bedding and cleaning supplies. In some cases a small closet or cupboard will be sufficient. The new rule exempts tourist homes from the mop sink requirement, and allows alternatives with approval from the local health authority.

/s/ Shannon L. McDonald
Rule Reviewer

/s/ Anna Whiting Sorrell
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State May 14, 2012